SUPREME COURT OF THE UNITED STATES.

No. ~~208.~~ 122

JAMES H. WOODWORTH, CLAIMANT AND LIBELLANT OF THE PROCEEDS OF THE SALE OF THE SCHOONER HARRIET ROSS, HER TACKLE, &c., APPELLANT,

vs.

THE CORN EXCHANGE INLAND NAVIGATION AND FIRE INSURANCE COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

GOVERNMENT PRINTING OFFICE.

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No. 208.

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INDEX.

	Original.	Print.
Transcript of record from district court	3	1
Proceedings in circuit court	21	7
Affidavit of J. H. Woodworth	22	7
C. Bradley	23	8
Decree	27	9
Appeal	29	9
Appeal bond	32	10
Clerk's certificate	35	11
Citation and service	36	11

1 Pleas in the circuit court of the United States of America within and for the northern district of Illinois, held in the city of Chicago, in said district, before the Hon. David Davis, one of the justices of the Supreme Court of the United States, presiding judge, and the Hon. Thomas Drummond, district judge of said district and associate judge of said circuit court, on Friday, the twenty-ninth day of July, in the July term of said court, in the year of our Lord one thousand eight hundred and sixty-four, and of our independence the eighty-ninth year.

WM. H. BRADLEY, *Clerk.*

JAMES H. WOODWORTH
vs.
THE PROCEEDS OF THE SALE OF THE SCHOONER HARRIET ROSS.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

2 Be it remembered, that on the second day of July, in the year of our Lord one thousand eight hundred and sixty-four, came said libellant, James H. Woodworth, by Messrs. Bates & Towslee, his proctors, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, his transcript of a record from the district court of the United States for the northern district of Illinois, in admiralty; which said transcript is in the words and figures following, to wit:

3 Pleas in the district court of the United States of America for the northern district of Illinois, held at the United States court-room, in the city of Chicago, in the district aforesaid, before the Honorable Thomas Drummond, district judge of said district, on Thursday, the twenty-first day of June, in the adjourned May term of said court, in the year of our Lord one thousand eight hundred and sixty-four, and of our independence the eighty-eighth year.

WM. H. BRADLEY, *Clerk.*

JAMES H. WOODWORTH
vs.
PROCEEDS OF SCHOONER HARRIET ROSS. } Libel.—Gen. No. 1,847.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered, that on the sixteenth day of April, in the year of our Lord one thousand eight hundred and sixty-four, came James H. Woodworth,
4 libellant, by Messrs. Bates & Towslee, his proctors, and filed in the office of the clerk of the district court of the United States for the northern district of Illinois, at Chicago, in said district, his libel against the proceeds of sale of schooner Harriet Ross, respondent, and also at the same time filed his stipulation for costs in said entitled cause; which said stipulation and libel are in the words and figures following, to wit:

Lib'lant's stipulation.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

District court, April term, A. D. 1864.

Whereas a libel was filed in this court on the 16th day of April, A. D. 1864, by James H. Woodworth against the proceeds of the sale of the schooner Harriet Ross, her boats, tackle, apparel, and furniture, for the reasons and causes in the said libel mentioned, and praying that the same may

be condemned to answer the prayer of the libelant; and the said libelant and Charles Bradley, surety, the parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of the libelant or his surety execution may issue against their goods, chattles, and lands for the sum of two hundred and fifty dollars:

5 Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and are, bound in the sum of two hundred and fifty dollars, conditioned that the libelant above-named shall pay all such costs as shall be awarded against by this court, or in case of appeal by the appellate court.

JAMES H. WOODWORTH,
Per C. BRADLEY, *his Agent.*
CHAS. BRADLEY.

Taken and acknowledged this 16th day of April, A. D. 1864, before me.
PHILIP A. HOYNE, *U. S. Com., N. D. Ill.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Charles Bradley, party to the above stipulation, being duly sworn, depose and say that he resides in the northern district of Illinois and is worth the sum of five hundred dollars over and above all his debts and liabilities.

CHAS. BRADLEY.

6 Sworn this 16th day of April, A. D. 1864, before me.
PHILIP A. HOYNE, *U. S. Com., N. D. Ill.*

Endorsed: Filed April 16th, A. D. 1864.
WM. H. BRADLEY, *Clerk.*

Libel.

UNITED STATES OF AMERICA, *Northern District of Illinois:*

To the Honorable Thomas Drummond, judge of the district court of the United States for the northern district of Illinois:

The libel and complaint of James H. Woodworth against the proceeds now in the registry of this honorable court arising from the sale of the schooner Harriet Ross, her boats, tackle, apparel, and furniture, in a cause of collision, civil and maritime, alleges as follows:

First. That at the time the cause of action hereinafter mentioned arose the schooner Harriet Ross was a vessel of over twenty tons burthen, and engaged in commerce and trade on the lakes and the navigable waters connecting the same, and was duly enrolled and licensed according to

7 the act of Congress in such case made and provided.

Second. That the schooner Flora Watson, which was a vessel of over twenty tons burthen and engaged in commerce and trade on the lakes and the navigable waters connecting the same, duly enrolled and licensed according to the laws of the United States, on the morning of the second of November, 1862, was navigating the waters of Lake Ontario with a cargo of about fourteen thousand three hundred and forty bushels of wheat, with, as this libelant is informed and alleges, a good and sufficient lookout properly stationed and engaged in the business of lookout, with a good and bright light properly placed forward so as to be seen by passing vessels, with a good and competent man in charge of her, the wind being southwest and a good sailing breeze, the schooner steering east-northeast, about three miles off Niagara light and about twelve miles from Canada, was run foul of by the schooner Harriet Ross striking said schooner Flora Watson on the starboard side and so breaking her that within fifteen minutes or thereabouts

said schooner sunk, together with her said cargo, and thereby said
8 schooner and her cargo of wheat were a total loss, and this libelant was damaged to the amount of three thousand dollars, together with interest, from said loss, in manner as hereafter alleged.

Third. That said schooner Harriet Ross was unskillfully managed and navigated, and that she had no proper lookout or light, and that the collision was caused solely by the want of care and skill on the part of the crew of the Harriet Ross and not from any want of care of those having charge of the schooner Flora Watson.

Fourth. That the Security Fire Insurance Company of New York, a corporation created and organized under and by virtue of the laws of the State of New York, and whose home office is in the city of New York, in said State of New York, having a branch office in Buffialo, in said State, in the year 1862, and before and at the time of said collision, had become and was an insurer upon the hull of said schooner Flora Watson to one John N. Gardner, who was the legal owner of said schooner Flora Watson,
9 against the dangers of navigation, in the sum of three thousand dollars; that the said insurance of the said Security Fire Insurance Company was still continuing and in force at the time of the collision between said schooner Harriet Ross and Flora Watson mentioned in the second allegation of the libel; that the said Security Fire Insurance Company soon after said collision before set forth in article two, upon due proof of said loss of the hull of said schooner Flora Watson, paid to the said John N. Gardner, for whom they had become such insurer, the sum of three thousand dollars.

Fifth. That the said Security Fire Insurance Company on the 9th day of April, 1864, assigned and sold to the libelant all their claim and demand for the said moneys paid by them for and on account of the loss of the said hull of said schooner Flora Watson, to the said John N. Gardner, and to all their claim and demand to the surplus moneys arising from the sale of said schooner Harriet Ross, now in the registry of this court.

Ninth. That a right and claim to said surplus moneys from the sale
10 of the said schooner Harriet Ross, now in the registry of this court, hath accrued to this libelant to the amount of the money and interest paid by said Security Fire Insurance Company for and on account of the loss of the hull of the schooner Flora Watson as before set forth. Therefore this libelant prays that out of the proceeds of said sale of the schooner Harriet Ross, now in the registry of this court, that this court order the amount of moneys and interest due thereon, paid by said Security Fire Insurance Company for the loss of said hull of said schooner Flora Watson, together with the costs of the libelant in this suit, be paid to the libelant, and that such other and further order may be made in the case as may be just and equitable.

JAMES H. WOODWORTH,
Per C. BRADLEY, *his Agent.*

BATES & TOWSLEE, *Proctors for Libelant.*

NORTHERN DISTRICT OF , *ss:*

Personally appeared before me, Charles Bradley, who, being duly sworn says that he is the agent of James H. Woodworth the within libelant;
11 that he has read the within libel, and the facts therein set forth are true.

CHAS. BRADLEY.

Subscribed and sworn before me this 16th April, 1864.
P. A. HOYNE, *U. S. Com., N. D. Ill.*

Endorsed: Filed April 16th, 1864.
WM. H. BRADLEY, *Clk.*

On this day, to wit, the 9th day of May, A. D. 1864, came the Corn Exchange Insurance Company, respondent, by R. Rae, esq., its proctor, and filed in said clerk's office its answer in said entitled cause; which said answer is in the words and figures following, to wit:

Answer.

To the Honorable Thomas Drummond, judge of the United States district court for the northern district of Illinois, in admiralty:

The answer of the Corn Exchange Insurance Company to the libel and complaint of James H. Woodworth against the proceeds of the sale
12 of the sch'r Harriet Ross, &c., filed April 16th, 1864, answers as follows:

That respondent admits the first, second, and third allegations of said libel, and as to the fourth, fifth, and sixth allegations in said libel, they answer that said pretended purchase of the amount insured on the hull of the schooner Flora Watson by the Security Insurance Co. of N. Y., if ever made was made to Charles Bradley, the real owner of the schooner Harriet Ross, at the time the collision occurred, who either purchased the same for his own use or for the use of who ever was owner at the time of said collision, and that said libel is now filed to deprive respondent of the benefits of whatever decree is now made or may hereafter be made in this cause.

Said libelant filed his libel claiming that heretofore under a pretended sale from the Columbia Ins. Co. of N. Y., and that the filing of this said libel is part and parcel of said attempt to escape payment of respondent's damages, and to deprive said respondent of the benefit of the decree made in this court, and that libelant is not entitled to participate in the proceeds
13 of the schooner in common with respondent, by whose diligence and at whose risk and expense the damages have been pronounced for.

Wherefore respondent prays said libel may be dismissed with costs.

O. D. SANSUM,
Agent for the Corn Exchange Ins. Co.

Subscribed and sworn to this ninth day of May, A. D. 1864, before me.
ORRIN SMITH, JR., *Notary Public.*

Endorsed: May 9th, 1864.

WM. H. BRADLEY, *Cl'k.*

Deposition of Henry C. Walker, taken by consent of the parties in this cause, at Buffalo, in the State of New York, before Oscar Folsom, notary public, on the 11th day of May, A. D. 1864.

I knew the Security Fire Insurance Company of New York in 1862. At that time it was a corporation in city of New York. April 14, 1862, that company insured the schooner Flora Watson against marine risks, including collision, in sum of $3,000 from April 14th, 1862, to November 30th, 1862.

John N. Gardner was then owner of Flora Watson. After her col-
14 lision with the Harriet Ross in fall of 1862, we paid the policy. We have not now the policy, but, according to my best recollection, I handed the policy to John N. Gardner, to be used in some suit or proceeding in connection with collision. The claim of the company for or on account of anything growing out of the collision, and as to any portion of the proceeds of the sale of the Harriet Ross in admiralty, in Chicago, was sold and assigned by the company to James H. Woodworth, some time about the forepart of the spring of 1864. We paid this loss as a total loss to John N. Gardner. Paid total loss under the policy and on account of her collision with the Harriet Ross.

Walker & Eustaphieve were the general agents of the company at the time of the assignment. They acted for the company in making the as-

signment, and made it for them. They had full power from the company to make this assignment. I have searched for the policy, and am unable to find it in possession of the company. If it was in the possession of the company I should have it.

H. C. WALKER.

15 On this day, to wit, the 21st day of April, in the adjourned March term, A. D. 1864, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit :

Record entry.

JAMES WOODWORTH
vs.
PROCEEDS SCH'R HARRIET ROSS. } Libel.

Now comes the respondent, by R. Rae, esq., proctor, and on motion leave is given to cross-examine L. C. Hall, whose deposition de bene esse has been taken and filed on the part of the libelant.

On this day, to wit, the 16th day of June, in the adjourned May term, A. D. 1864, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit :

Record entry.

JAMES H. WOODWORTH
vs.
PROCEEDS OF THE SALE OF THE SCHOONER HARRIET ROSS. } Libel.

16 Now come the parties, by their proctors, and by agreement this cause is set down for hearing on the libel, the answer thereto, the proofs and exhibits filed, and after hearing the same, together with arguments of the advocates of the respective parties, the court not being now sufficiently advised in the premises takes time to consider.

On this day, to wit, the 21st day of June, in the adjourned May term, A. D. 1864, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit :

Record entry.

JAMES H. WOODWORTH
vs.
PROCEEDS OF SALE OF SCHOONER HARRIET ROSS. } Libel.

Now come the parties, by their respective proctors, and the court having considered and being now fully advised upon the matters heretofore submitted in this case pronounces against the libelant and dismisses the libel. It is thereupon considered and adjudged by the court that the libel be dismissed at the costs of the libelant, and that the respondent have and
17 recover of the libelant his costs and charges by him about his defense in this behalf expended, to be taxed, and that execution issue therefor.

On this day, to wit, the 24th day of June, A. D. 1864, came said libelant, by his proctors, and filed in the said clerk's office his prayer for appeal and his notice in said entitled cause; which said prayer for appeal and said notice are in the words and figures following, to wit :

Appeal.

District court of the United States for the northern district of Illinois, in admiralty.

JAMES H. WOODWORTH
vs.
THE PROCEEDS OF THE SALE OF THE SCHOONER HARRIET ROSS.

The above-named libelant conceiving himself aggrieved by the final decree entered on the twenty-first day of June, 1864, in the above-entitled cause, doth hereby appeal therefrom to the next circuit court of the United States for the northern district of Illinois, to be held in and for the said district, and he hereby prayes that his appeal may be allowed, and that a transcript of the record and proceedings in the cause, duly authenticated, may be
18 sent to the said circuit court.

Chicago, June 21st, 1864.

BATES & TOWSLEE, *Proctors of Libelant.*

Endorsed: Filed June 24th, 1864.

WM. H. BRADLEY, *Clerk.*

Notice of appeal.

District court of the United States for northern district of Illinois, in admiralty.

JAMES H. WOODWORTH
vs.
THE PROCEEDS OF THE SALE OF SCHOONER HARRIET ROSS.

To R. Rae, esq., proctor of respondent:

SIR: You will please take notice that we have this day taken an appeal from the decree made this day of the district court of the United States for the northern district of Illinois in the above-entitled cause, dismissing the libel in said cause, to the next circuit court of the United States for the northern district of Illinois.

Very respectf'y,
BATES & TOWSLEE, *Proctors for Libelant.*

Chicago, June 21st, 1864.

19 I accept service of a copy of the within notice of appeal this 21st June, 1864.

R. RAE.

Endorsed: Filed June 24th, 1864.

WM. H. BRADLEY, *Clerk.*

On this day, to wit, the 24th day of June, A. D. 1864, came said libelant, by his proctors, and filed in said clerk's office his appeal bond in said entitled cause; which said bond is in the words and figures following, to wit:

Appeal bond.

District court of the United States for the northern district of Illinois, in admiralty.

JAMES H. WOODWORTH
vs.
THE PROCEEDS OF SALE OF SCHOONER HARRIET ROSS.

Whereas an appeal has been taken from the decree of this court made on the twenty-first day of day of June, 1864, in a certain cause wherein James H. Woodworth is libelant against the proceeds of the sale of the

schooner Harriet Ross: Now, therefore, the stipulators undersigned
20 hereby stipulate in the sum of two hundred and fifty dollars to pay all damages and costs which shall be awarded against the said appellant by the final decree rendered by the appellate court.

J. H. WOODWORTH.
W. K. McALLISTER.

Taken and acknowledged this 22nd day of June, 1864, before me.
[SEAL.] OBADIAH JACKSON, JR., *Notary Public.*

NORTHERN DISTRICT OF ILLINOIS:

William K. McAllister, party to the above stipulation, being duly sworn, depose and say that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

W. K. McALLISTER.

Subscribed and sworn to this 22nd day of June, A. D. 1864.
[SEAL.] OBADIAH JACKSON, JR., *Notary Public.*

Endorsed: Approved. THOMAS DRUMMOND.

Filed June 24th, 1864.

WM. H. BRADLEY, *Clerk.*

21 UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

I, William H. Bradley, clerk of the district court of the United States for said northern district of Illinois, hereby certify the above and foregoing to be a true and complete transcript of all the record and proceedings had in said court in the cause wherein James H. Woodworth is libelant and the proceeds of sale of schooner Harriet Ross respondent, made up under the fifty-third rule in admiralty, as the same appears of record in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said district court, at my office, in Chicago, in said district, this twenty-eighth day of June, A. D. eighteen hundred and sixty-four, and of our independence the eighty-eighth year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Endorsed: Filed July 2d, 1864.

WM. H. BRADLEY, *Cl'k.*

22 On the hearing of this cause in the circuit court the respondent, by Mr. Rae, his proctor, offered in evidence, subject to objection on the part of the libellant's proctors, the following affidavits of James H. Woodworth and Charles Bradley, which were filed in the district court for this district in the case of George E. Purington and Abner R. Scranton against the schooner Harriet Ross, being the original case in which this libel of James H. Woodworth against the proceeds of the said schooner Harriet Ross was filed as an intervening claim.

Affidavit of James H. Woodworth.

STATE OF ILLINOIS, *Cook County, ss:*

I, James H. Woodworth, having first been duly sworn, depose and say that on the 16th of February, A. D. 1863, I became purchaser of the schooner Harriet Ross at a sale by the marshal of the northern district of Illinois; that at the time of such sale I held a mortgage upon said vessel as collateral security for the payment of a large sum of money due and owing
23 to me from Nathan B. Bradley. And I further depose and say that I became the purchaser of said vessel at such sale in order to perfect

title in me to said vessel and thus better protect my interest against loss. And I further depose and say that I have no knowledge of any outstanding claims or obligations existing against said vessel; and that I do not believe that any do exist, excepting the mortgage claim that I control.

J. H. WOODWORTH.

Subscribed and sworn to before me this 17th day of Feb'y, A. D. 1863.

BENJ. E. GALLUP, *Notary Public.*

Endorsed: Filed Feb. 18, 1863.

WM. H. BRADLEY, *Clk.*

Affidavit of Charles Bradley.

STATE OF ILLINOIS, *Cook County, ss:*

Charles Bradley, having first been duly sworn, deposes and says that he is the agent of Nathan B. Bradley, who is a resident of the State of
24 Michigan; that he has been such agent since the month of June, A. D. 1858; that as such agent he has since the said month of June had the care of the schooner Harriet Ross, paying her liabilities, and all claims accruing against her, except a certain mortgage upon said vessel, executed by the said Nathan B. Bradley to James H. Woodworth, and a certain claim of Messrs. Purington & Scranton for the sum of seventy two and 01-100 dollars. And this deponent further says that the said sch'r was sold on the 16th day of Feb'y, 1863, by the marshal for the northern district of Illinois under and by virtue of a decree made by the hon. judge of the U. S. dist. court for said district in the matter of the libel filed in said court by the said Messrs. Purington & Scranton against the said schooner Harriet Ross for the amount of their said claim. And this deponent further says that at the time of such sale of the said schooner there was, besides the said claim of Messrs. Purington & Scranton and the said mortgage to said James
25 H. Woodworth, only due and unpaid on account of said sch'r the sum of about seventeen dollars, which sum has since been paid by this deponent as said agent.

And this deponent further says that he has no knowledge of any other claim or outstanding obligation on account of the said schooner, and that he does not believe that any exist.

And this deponent further says that the said sale of the said schooner was made to James H. Woodworth without collusion with the said libellant or any person or persons whomsoever, but for reason that said Nathan B. Bradley is indebted to the said Woodworth in a large amount of money.

CHAS. BRADLEY.

Subscribed and sworn to before me this 17th day of February, A. D. 1863.

BENJ. E. GALLUP, *Notary Public.*

Endorsed: Filed Feb. 18, 1863.

WM. H. BRADLEY, *Clk.*

26 On this day, to wit, the twenty-second day of July, in the July term of said court, A. D. 1864, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

JAMES H. WOODWORTH
vs.
THE PROCEEDS OF THE SALE OF THE SCHOONER HARRIET ROSS. } Appeal.

Now come the parties, by their respective proctors, and thereupon this cause is set down for hearing upon the record and proofs filed herein, and the court, after hearing the arguments of the respective proctors, and not being sufficiently advised in the premises, takes time to consider.

And afterwards, to wit, on the twenty-ninth day of July, in the July term of said court, A. D. 1864, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

27 JAMES H. WOODWORTH
vs.
THE PROCEEDS OF THE SALE OF THE SCHOONER HARRIET ROSS. } Appeal.

Now come the parties, by their respective proctors, and the court having considered and being now fully advised upon the matters herein submitted, it is considered by the court that the decree of the district court herein be affirmed, and the libel dismissed at the costs of the libellant, and that the respondent have and recover of and from the libellant and William K. McAllister, his stipulator, the costs and charges by him in this behalf expended, and also the costs in the court below, amounting to the sum of dollars and cents, and that execution issue therefor.

On this day, to wit, the thirtieth day of July, A. D. 1864, came the said libellant by his proctors and filed in said clerk's office, in said entitled cause, his notice of appeal, which is in the words and figures following, to wit:

28 Circuit court of the United States for the northern district of Illinois.

JAMES H. WOODWORTH
vs.
POCEEDS OF SALE OF THE SCHOONER HARRIET ROSS.

The above-named libellant conceiving himself aggrieved by the final sentence or decree entered on the 29th day of July, 1864, in the above-entitled cause, doth hereby appeal therefrom to the Supreme Court of the United States, and he prays that this his appeal may be allowed, and that a transcript of the record, proceedings, and evidence in the cause, duly authenticated, may be sent to said Supreme Court,

BATES & TOWSLEE, *Proctors for Libellant.*

Endorsed: Filed July 30th, 1864.

WM. H. BRADLEY, *Clerk.*

And afterwards, to wit, on the fifth day of August, A. D. 1864, came the said libellant, by his proctors, and filed in said clerk's office, in said entitled
29 cause, his appeal and appeal bond; which appeal and appeal bond are in words and figures following, to wit:

Appeal.

JAMES H. WOODWORTH, libellant and appellant,
vs.
THE PROCEEDS OF SALE OF SCHOONER HARRIET ROSS, her tackle, apparel, &c., the Corn Exchange Inland Navigation and Fire Insurance Company, claimant and appellee.

To the honorable the Supreme Court of the United States:

The appeal of James H. Woodworth, the above-named libellant and appellant, respectfully showeth that on the 16th day of April, 1864, the above-named James H. Woodworth filed his libel in the district court of the United States for the northern district of Illinois against the proceeds of sale of the Schooner Harriet Ross, her tackle, apparel, &c., the said proceeds then being in the registry of said district court in a cause civil and maritime for the re-

covery of damages sustained by the Columbian Insurance Company,
30 of New York, to the schooner Flora Watson, by collision with the said schooner Harriet Ross, on Lake Ontario, in the State of New York, the said Columbian Insurance Company being then at the time of said collision an insurer of the Flora Watson to the amount of three thousand dollars; that said Flora Watson was sunk and destroyed by such collision, and that the libellant and appellant was the assignee for value of said claim for damages; that process was duly issued, and said process detained in the registry of said district court; that thereupon the Corn Exchange Inland Navigation and Fire Insurance Company intervened for said proceeds, filed its claim and its answer to said libel, and the said libellant replied thereto. And such proceedings were had in the said cause that on the 21 day of June, 1864, a final decree was made and pronounced therein by the said district court, wherein it was, in substance, adjudged that the said libel be dismissed with cost, and that after such final decree your petitioner duly appealed therefrom to the circuit court of the United States for the northern district of Illinois, and the said cause was removed thereby into the said cir-
31 cuit court, and there tried anew; and such proceedings were had in the said circuit court that afterwards, on the 29th day of July, 1864, the said circuit court made a final decree in the said cause, whereby it was decreed that the said decree of the district court be in all things affirmed with costs, and that the said appellee have execution, and that the stipulators cause their stipulation to be fulfilled; which said decree of the said circuit court is, as this appellant is advised, erroneous and ought to be reversed. Wherefore this appellant appeals from the whole of said decree of said circuit court to the Supreme Court of the United States, and respectfully prays that the said decree of the said circuit court, and the libel, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court, and every part thereof, may be reversed, and a decree sustaining said libel, and in favor of said appellant, for the
32 damages as claimed in said libel, with costs, or such other decree as to the said Supreme Court shall seem just.

Dated at Chicago this 4th day of August, 1864.

JAMES H. WOODWORTH.

BATES & TOWSLEE, *Proctors for Appellant.*
GEO. C. BATES, *Advocate.*

Endorsed: Filed August 5th, 1864.

WM. H. BRADLEY, *Clk.*

Appeal bond.

Circuit court of the United States of America, northern district of Illinois.

JAMES H. WOODWORTH, libellant and appellant,
vs.
PROCEEDS OF SALE OF THE SCHOONER HARRIET ROSS, her tackle, apparel, &c., the Corn Exchange Inland Navigation and Fire Insurance Company intervening, &c., and appellee.

Know all men by these presents that we, Charles Bradley and Frederick E. Bradley, of Chicago, in the district of Illinois, are held and firmly
33 bound unto the above-named the Corn Exchange Inland Navigation and Fire Insurance Company in the sum of ten hundred dollars, to be paid to the said appellee, for the payment of which, well and truly to be

made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the 5th day of August, 1864.

Whereas the above-named appellant has prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above suit by the circuit court of the United States for the northern district of Illinois:

Now, therefore, the condition of this obligation is such that if the above-named appellant shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

CHAS. BRADLEY. [L. S.]
F. E. BRADLEY. [L. S.]

34 Sealed and delivered and taken and acknowledged this 5th day of August, 1864, before me.

WM. H. BRADLEY, *Clk.*

UNITED STATES OF AMERICA, *Northern District of Illinois:*

Charles Bradley and Frederick E. Bradley, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of one thousand dollars over and above all his just debts and liabilities.

CHAS. BRADLEY.
F. E. BRADLEY.

Sworn to this fifth day of August, A. D. 1864, before me.

WM. H. BRADLEY, *Clerk.*

I approve the above bond and the sufficiency of the sureties thereto. Aug'st, 1864.

THOMAS DRUMMOND.

Endorsed: Approved.

Filed August 5th, 1864.

WM. H. BRADLEY, *Clk.*

35 NORTHERN DISTRICT OF ILLINOIS:

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify that the foregoing is a true and complete transcript of the record and all the proceedings had in the cause wherein James H. Woodworth is the libellant and the proceeds of the sale of the schooner Harriet Ross is the respondent, as the same appears from the records of said court now in my custody and control.

In testimony whereof, I have hereunto set my name and affixed the seal of said court, at my office, in Chicago, in said district, this twenty-first day of November, in the year of our Lord one thousand eight hundred and sixty-four, and of our independence the eighty-ninth year.

WILLIAM H. BRADLEY, *Clerk.*

36 By the Honorable Thomas Drummond, one of the judges of the circuit court of the United States for the northern district of Illinois, to the Corn Exchange Inland Navigation and Fire Insurance Company:

Whereas James H. Woodworth, claimant and libellant of the proceeds of the sale of the schooner Harriet Ross, her tackle, apparel, &c., has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the northern district of Illinois, made in favor of the said Corn Exchange Inland Navigation and

Fire Insurance Company against the said James H. Woodworth, and have filed the security required by law: You are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of Chicago, in the northern district of Illinois, the 6th day of August, A. D. 1864, and of the independence of the United States the eighty-eighth.

THOMAS DRUMMOND.

37 NORTHERN DISTRICT OF ILLINOIS, *ss:*

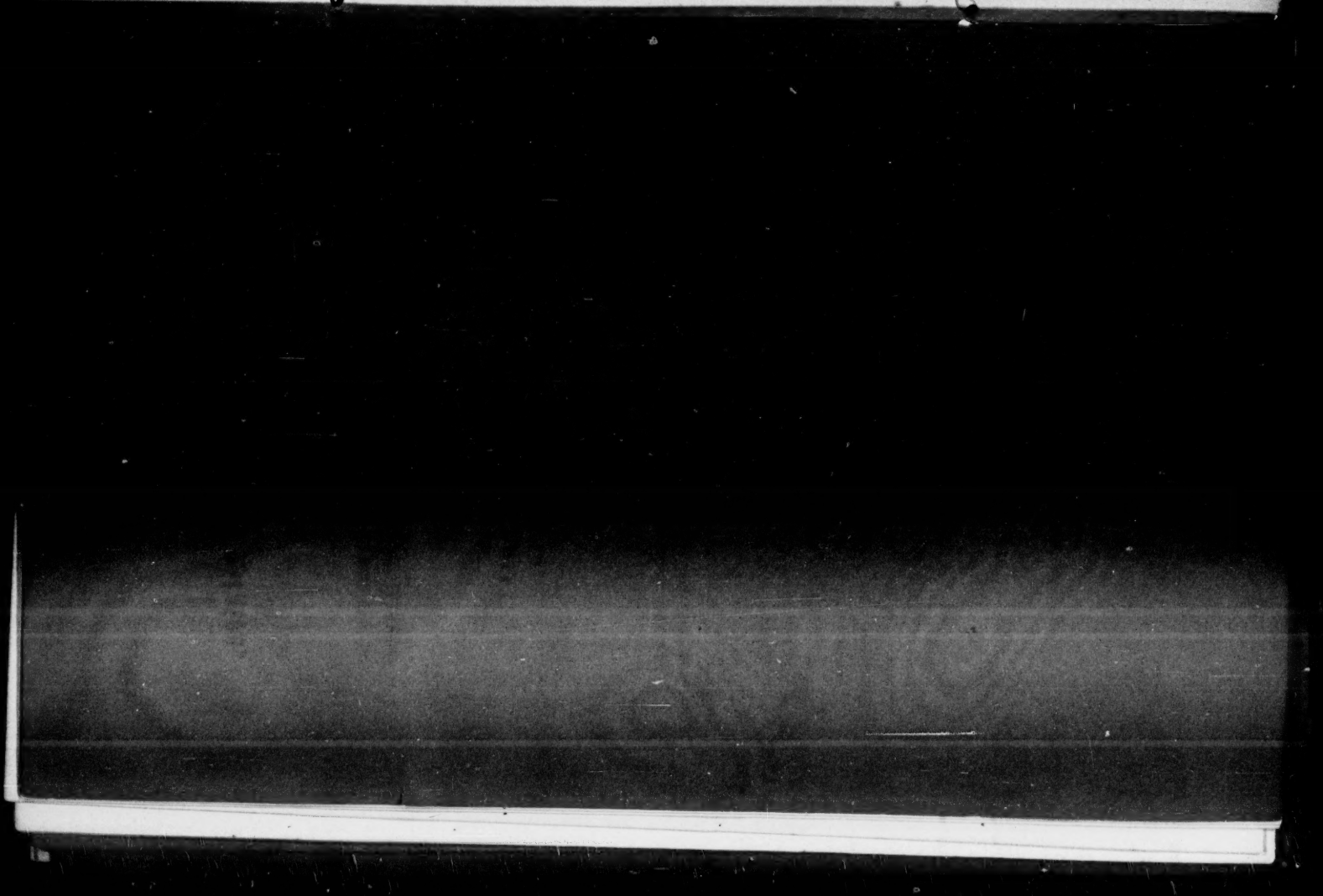
I, Edwin C. Towslee, being duly sworn, do say that I served the within citation on the appellee within named by leaving with R. Rae, esq., the proctor of said appellee, at his office, in Chicago, Illinois, on the 11 of August, 1864, a true copy of the within citation.

EDWIN C. TOWSLEE.

Subscribed and sworn to before me this 28th day of Sept., 1864.

OBADIAH JACKSON, JR., *Notary Public.*

Filed 7 December, 1864.



Supreme Court of the United States.

~~No. 208.~~ 122

JAMES H. WOODWORTH, CLAIMANT AND LIBELLANT OF THE PROCEEDS OF THE SALE OF THE SCHOONER HARRIET ROSS, HER TACKLE, &C., APPELLANT,

vs.

THE CORN EXCHANGE INLAND NAVIGATION AND FIRE INSURANCE COMPANY.

I.

The libel on its face is not an intervening libel, but an original libel; and after reciting the cause of action and its assignment to libellant, and that a right and claim to surplus moneys has accrued, prays that the same may be decreed to libellant. No reference is made to any original proceeding, or to an adverse party claiming the fund. No evidence is offered by the libellant as to the amount in the registry, or that any disposition has already been made of it at the time of filing their libel or before decree. No claim has been filed under the rules, or no one appears who, on the face of the record, has the right to admit any of the allegations in the libel, and no proof is offered to sustain them. So that the Court was unable to say—

I. That there was surplus moneys in the registry.

II. That the facts stated in the libel were true.

III. That the libellant was entitled to anything.

II.

It does appear on the face of the libel that the lien, if any existed, was an assigned one; assigned to a party who was not owner of the property at the time of loss, who was not bailee of the same, or in any manner in possession of the same, or responsible for the safety of the property. It is the naked assignment of a law suit. It is an attempt to proceed in his own name for reparation for a wrong which was not done to him or his property, and the assertion of a privilege given to a selected class in exclusion of others. Such privileges being strictly *juris*, they cannot be argumentatively extended from one class of persons or things to another. Ship-owners and shippers and their underwriters may have such a lien, persons engaged in trade and commerce, but not those engaged in the trade and traffic of litigation. The latter are not to be regarded as a favored class for whose benefit the ordinary rules of law are to be surrendered. The lien is inalienable. It cannot be assigned or transferred to another person so as to give him the right of action in *rem* as assignee. (New Eagle 4, notes of case p. 427; Janet Wilson, 1 Swaby, p. 262; Louisa, 6 notes of case, p. 532.)

III.

The record also shows that the libellant was mortgagee of the Harriet Ross at the time of the collision, and was not in a position to claim any right paramount to the rights or claims of those who had a superior lien against the *res*, or against the proceeds. So that the libellant being the mortgagee cannot pay the amounts due, which are superior liens upon the vessel, in order to save it and with it his security. The lien is extinguished, and cannot be revived in the person of the payor who has accordingly no right of action in the court of admiralty in respect of his advances, and cannot set up such satisfied claim to default others having a superior lien to his own.

IV.

If it is treated as an intervening libel, then the record is imperfect, because it does not show the whole record. If the whole record is before the court, then it appears that on the 23d day of February, A. D. 1863, the Corn Exchange Inland Navigation and Fire Insurance Company of New York, filed a libel in the United States district court against the proceeds of the schooner H. Ross, for the loss of the Flora Watson (whereof libellant was the underwriter) by collision with the schooner H. Ross, alleging the loss to have occurred through the fault of those in charge of the Ross. That an answer was put in 26th day February, 1863, by N. B. Bradley, claimant, by his brother Charles Bradley. That on the first of April of the same year, Woodworth filed a libel upon an assigned claim of the Columbian Insurance Company to him for the loss of the wheat in the Flora Watson, and the loss of salt on the Harriet Ross. And on the 16th of April, 1864, one year after the first libel, another libel was filed upon an assigned claim of the Security Insurance Company, New York, for loss of the hull of the Watson. On the 12th of December, *preceding*, the court had pronounced for the claim of the Corn Exchange Insurance Company, and the cause referred to assess damages. Final judgment was not rendered until the 6th day of June, 1864, for the sum of $5,007.60. On the 21st day of June, both of the Woodworth libels were dismissed.

POINT.

Prior Petens, who, by superior diligence, obtains a judgment before other creditors, having co-ordinate or superior claims, having done so, shall be paid his debt in preference to the latter. (Saracen, 6 Moore, P. C. Rep. 73; English Admiralty, 4, same case; Clara, 1 Swaby, page 7; Dundee, 2d Hagg, 143; John Davis, 1 W. Rob., 136.

Robt Rae
Pltf's Atty

SUPREME COURT OF THE UNITED STATES.

No. 122.—DECEMBER TERM, 1866.

JAMES H. WOODWORTH, APPELLANT,

vs.

THE CORN EXCHANGE INLAND NAVIGATION AND FIRE INSURANCE COMPANY.

BRIEF AND ARGUMENT FOR APPELLANT.

GEORGE B. HIBBARD, *for Appellant, Buffalo, N. Y.*

SUPREME COURT OF THE UNITED STATES.

No. 122.

JAMES H. WOODWORTH, APPELLANT,
vs.
THE CORN EXCHANGE INLAND NAVIGATION AND FIRE INSURANCE COMPANY.

Brief on the part of the Appellant.

GEORGE B. HIBBARD, *for Appellant, Buffalo, N. Y.*

The subject matter of this cause, is connected, in some measure, with Nos. 120 and 121 on the present docket. This cause, as well as each of the others, must, however, be decided upon its own record.

The libel in this cause was filed April 16, 1864, (Record, folio 11,) and in it the libellant, the present appellant, claims to recover as the assignee of the Security Fire Insurance Company, underwriters upon the hull of the schooner Flora Watson, (fols. 9 and 10,) for losses, which had been sustained by the underwriter, in consequence of a collision between that vessel and the schooner Harriet Ross. The libel prays that these damages may be paid out of the proceeds of the sale of the Ross in the Registry, &c. (Fol. 10.)

The answer admits all the allegations of the libel, except that it, perhaps, puts in issue the question as to whether or not the claim of the underwriter was assigned; and claims that the assignment was a pretended one, actually made to Charles Bradley, the real owner (as the answer alleges) of the Ross. (Fol. 12.)

The actual fact of the assignment of the claim to the appellant is positively proven. (Fol. 14.)

The proof introduced, when the case was in the Circuit, under objection, does not at all affect the aspect of the question. The proof consisted of the affidavit of the appellant and Charles Bradley, made February 18, 1863, (before the assignment of the claim in question to the appellant, fol. 14,) which affidavits are set forth. (Fols. 23, 24, 25.) This proof, so far as Bradley's affidavit is concerned, was certainly objectionable; and, it having been objected to in the Circuit, will be rejected now. Bradley was no party to the suit, nor is he shown to have had any interest in the controversy. He should have been called as a witness.

But the proof, at most, amounts to nothing. It simply shows that at the time the appellant made the affidavit, he knew nothing of any outstanding claims. (Fol. 23.) There is not a particle of proof that he did; and the assignment to him of this very claim, was made long afterwards. (Fol. 14.)

Upon the record in this case alone, it stands admitted or proved, and in one way or the other substantiated, that the Security Fire Insurance Company, an underwriter, before the filing of this libel, sustained and paid damages, arising from the negligence of the Harriet Ross, and that the Company, before the filing of the libel, assigned its claims to the appellant. The appellant filed this libel against the proceeds of the sale of the Ross in the Registry. Upon this state of facts the appellant claims there is nothing appearing in the record in this case, which can make at all doubtful his right to recover.

He, therefore, makes his

POINT FIRST

Upon the record, *in this case alone*, (and the Court cannot look outside this record;) there is nothing appearing, making his right to recover at all doubtful. Upon the contrary, as appears from the foregoing statements, every fact which entitles him to have his claims paid out of the Registry, is either expressly admitted by the pleadings, or abundantly proven.

To enable the Second Point to be presented, it will be necessary to add a statement of other facts appearing in the record, in the case of Nathan Bradley *vs.* "The Corn Exchange Inland Navigation and Fire Insurance Company," No. 120, on the present docket, but which it is claimed cannot be referred to in this case, and to which the appellant has no desire to refer unless this Court shall decide to consider it.

That case arose upon a libel filed by the Corn Exchange Inland Navigation and Fire Insurance Company against *the same proceeds* upon claims of the same nature as in this case. The libel in that case was filed February 24, 1863, and a final decree obtained therein June 6, 1864. (See record in that case, fol. 12, 81.) The libel in this case was filed April 16, 1864, (fol. 11,) before the final decree in that case.

SECOND POINT.

The appellant is entitled to have his claim paid out of the proceeds in the Registry, although the libel in the case of The Corn Exchange Inland Navigation and Fire Insurance Company, was first filed, as the libel in this case was filed before the *final decree* (the sole decree binding all the world) was made in the other case.

1. There is no proof of any of the facts *in this case*, upon which any doubt as to this conclusion can be based. If the respondent desired to avail itself of any doubt upon this point, it should have

proven the facts upon which the doubt could be raised. This Court cannot look into the record in a *case to which this appellant was not a party*, to establish a ground for its doubt.

II. But as the libel in this case was filed before a *final* decree was obtained in the other case, the appellant is entitled to have his claim paid, *pro rata*, out of the proceeds in the Registry.

See particularly the cases first and last cited.

The Steamboat America, 2 West. L. Monthly, 279.
The Saracen, 2 Wm. Robinson, 451, (9 English Ad. R., 451.)
The William F. Safford, 1 Vernon Lushington, 69.
The Clara, 1 Swabey, 1.
The Desdamona, 1 Swabey, 158.

GEORGE B. HIBBARD, *for Appellant.*
Buffalo, N. Y.